



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Mr. Raymond A. Cowley
Law Firm of Jarvis & Kittleman
P.O. Box 1416
McAllen, Texas 78505

OR94-096

Dear Mr. Cowley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 22888.

The United Irrigation District (the "irrigation district"), which you represent, has received a request for 24 categories of information. You have submitted representative samples of the requested information to us for review and claim that section 552.103(a) of the act exempts the requested information from required public disclosure.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You claim that the requested information relates to a suit pending in the 92nd Judicial District Court, Hidalgo County, Texas, styled *Jose Luis Pedroza v. United Irrigation District*, Cause No. C-1639-93-A. We conclude that you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The irrigation district may therefore withhold the requested information in its entirety.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) (former section 3(a)(3), V.T.C.S. article

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

6252-17a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).² We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 22888
ID# 23612

cc: Mr. Raymundo Lopez
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(w/o enclosures)

²While there is no section 552.103 interest in withholding information that has been released to the opposing party, some information which the irrigation district has released in discovery, must nevertheless be withheld from the public, if it is considered confidential by law, for example, information on a federal W-2 form. See 26 U.S.C. § 6103(a).